IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1715 OF 2004
IN
SUMMARY SUIT NO. 3760 OF 1989

Karimjee P.Ltd .....Plff
vs.
Sharad R. Khanna .....Defnd

A L O N G W I T H
CHAMBER SUMMONS NO. 1826 OF 2004
IN
SUMMARY SUIT NO. 3760 OF 1989

Karimjee P.Ltd .....Plff
vs.
Sharad R. Khanna .....Defnd
AND
Eat India Private Ltd .....Applicant

I.D. Cruz for the applicants.
B.B. Saraf i/b. Mr. Nagvederai for plffs.
Ms.F.Sidhwa with Ms.S.R. Moghe i/b. Mehta and Girdharlal for defendants.

CORAM: S.U. KAMDAR, J.

DATE : 8TH JUNE, 2005.

JUDGMENT :

1. These two chamber summons are taken out for raising of an attachment levied on a flat bearing no.-22B, Kapur Mahal, 4th floor, 65-Marine Drive, Mumbai-20.

2. The first chamber summons namely Chamber summons no.1715 of 2004 has been taken out by the judgment debtor Sharad Khanna whereas the second chamber summons is taken out by the company known as Eat India Private Limited.

3. The said company Eat India Private Limited is a private limited company incorporated by the judgment debtor Sharad R. Khanna. The said judgment debtor Sharad R. Khanna and his close relatives are the directors of the said company. It has been claimed that the company known as Eat India Private Limited is the owner inrespect of the said premises being flat no.22-B and the right, title and interest inrespect of the said premises is claimed under a deed of assignment dated 24.7.1998. The applicant Eat India Private Limited has filed an affidavit in support of the

chamber summons dated 7.12.2004. The said affidavit in support is one page affidavit which only mentions that the said attachment is wrongly levied on the said flat because it does not belong to Sharad Khanna the judgment debtor and that inspite of communicating that the said flat does not belong to the judgment debtor the plaintiff through the Sheriff has wrongly attached the said flat. The said company Eat India Private Limited has not produced any documents of any nature whatsoever or relied upon any documents in the affidavit filed alongwith the said chamber summons. However, in the course of hearing I permitted the applicant herein to produce a document being Deed of Assignment dated 24.7.1998. Apart from the aforesaid document the applicant has not produced any other evidence to show that the said flat is belongs to the said applicant company. The perusal of the deed of assignment dated 21.7.1998 indicates that the assignor is supposed to have assigned right, title and interest inrespect of the said flat no.22 B in favour of the applicant. However it is important

to note that in the recital to the said Deed of Assignment nowhere it is mentioned that the said assignor Mukta N. Maniar did not have any right, title and interest herself in the said flat no.22B. On the contrary Clauses - 10 and 20 indicates that she had right,title and interest inrespect of Flat No. 21(B) and not inrespect of Flat No. 22(B). However the said deed of assignment in the operative part indicates that the assignment is also given inrespect of the said flat no.22(B). Prima-facie it is not possible to accept the contention of the applicant relying upon the said deed of assignment in absence of any material evidence to indicate that the assignor was in fact having any right, title and interest in the said flat which she could assign in favour of the applicant herein.

4. The judgment debtor ha also taken out another Chamber Summons no.1715 of 2004 for the similar reliefs of raising an attachment of the said flat. However he has also not produced any evidence in support of the said Chamber summons.

There is no other evidence produced to even show that for the aforesaid assignment any consideration in respect of the said premises has been passed from the said applicant company namely Eat India Private Limited to the said Mukta N. Maniar to the assignor thereof.

5. It is also an admitted position that the judgment debtor is one of the director of the said company namely Eat India Private Limited. It is also an admitted position that other directors and shareholders of the company are also closely related to the judgment debtor. The judgment debtor is claiming that he is the tenant inrespect of the said premises and his tenancy is created by Eat India Private Limited. Prima-facie I am of the opinion that the so called assignment of flat no.22B in favour of the applicant company being Eat India Private Limited cannot be accepted since no details of consideration have been forthcoming from the applicant or the judgment debtor. I am also of the further prima-facie opinion that the judgment debtor is utilising the facade of

corporate entity and is purpotedly utilising the premises for himself with a view to defeat the decrees passed against him personally. This is the case where the corporate veil ought to be lifted and it is necessary to go into the depth of the transaction and to see whether clock of the corporate entity is utilised to defeat the decree ought to be looked into. In the aforesaid circumstances I am of the opinion that in the present case a detailed evidence is required to be laid and therefore the matter is posted for evidence and the chamber summons should is adjourned to court for recording evidence. In view of the provisions of Order 21 Rule 58 and Order 21 Rule 97 to 101 it is necessary that the evidence should be laid to establish whether M/s. Eat India Private Limited has any right, title and interest inrespect of the said flat or is being used as a corporate entity and the real person is the judgment debtor himself. I accordingly therefore adjourn the Chamber Summons for recording evidence. I also appoint Commissioner under order 21 rule 4(a) of the CPC. For the

purpose of recording evidence I appointed Mr. Rathod, Advocate as Commissioner for recording evidence. The Commissioner is directed to complete the evidence on or before 15.7.2005.

6. I am also of the further opinion that in the mean time in the present case additional safeguard ought to be provided for. The judgment debtor has admitted the liability to make payment of the decreetal amount to the plaintiff decree holder. It is also prima-facie clear that the judgment debtor is seeking to utilise the corporate entity for the purpose of defeating the claim of the plaintiff decree holder. In the aforesaid circumstances I am of the opinion that till the disposal of the chamber summons the court Receiver should be appointed in execution inrespect of the said flat no.22(B) situated at Kapur Mahal, 4th floor, 65-Marine Drive, Mumbai-20. However, the Court Receiver shall not disturb the possession of the judgment debtor and appoint him as an agent of the Court Receiver subject to the terms of royalty but without any

security. Both the Chamber Summons are accordingly adjourned to court for recording evidence with the aforesaid directions.

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